STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from The Administrative Law Court
Shirley C. Robinson, Administrative Law Judge
ALC Case No. 15-ALJ-040078-AP
Appellate Case No. 2015-001519
Opinion No. 2016-UP-281

James A. Sellers PETITIONER,

v.

South Carolina Department of Corrections RESPONDENT,

PETITION FOR WRIT OF CERTIORARI

James A. Sellers, #243348
Wateree River CI
P.O. Box 189
Rembert, SC 29128

Pro se Petitioner

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Certificate of Counsel

The undersigned hereby certifies that the Petitioner filed a Petition for Rehearing, with the South Carolina Court of Appeals, on 06/21/16. The Petition for Rehearing was denied on 09/23/16.

Date: 10/24/16

James A. Sellers, #243348
WRCI-243348-D3/18A
P.O. Box 189
Rembert, SC 29128

Issue Presented

1. Was petitioner, who was convicted of Accessory Before the Fact to a Felony (Murder), and received a sentence of twenty five years (25), barred from receiving sentence reduction credits?

Statement of the Case

The Petitioner was convicted, after a trial, in August of 1997, of Trafficking in Crank (100 – 200 grams) and Accessory Before the Fact to a Felony; To wit: Murder. The trial judge sentenced the Petitioner to two, concurrent, terms of twenty-five (25) years in prison and a $50,000 fine.

On 01/06/14, the Petitioner initiated a Step 1 Grievance (KRCI-0070-14) thru the South Carolina Department of Correction's Inmate Grievance Process. That grievance was brought to challenge a time-calculation grievance under Al Shabazz, and contended that SCDC was not properly calculating the Petitioner's Accessory sentence. SCDC denied that grievance on 02/27/14 by claiming that the Petitioner's sentencing orders stated a "mandatory minimum term of twenty-five (25) years", and that SCDC's calculations were per statute.

The Petitioner advanced that grievance to Step 2 on 02/28/14, and was denied with the very same reasons on 01/31/15.

On 02/10/15, the Petitioner filed a Notice of Appeal, in connection with KRCI-0070-14), with the South Carolina Administrative Law Court. It was assigned Docket No. 15-ALJ-04-0078-AP. On 06/15/2015, the Administrative law Court issued an Order supporting SCDC's denial of sentence reduction credits.

The Petitioner filed a Notice of Appeal with the South Carolina Court of Appeals on 07/13/15. That appeal was docketed as Appellate Case No. 2015-001519. On 06/08/16, the South Carolina Court of Appeals issued an Order affirming the Administrative Law Court's decision. The Petitioner filed a Petition for Rehearing, with the South Carolina Court of Appeals, on 06/21/16. The Petition for Rehearing was denied on 09/23/16.

On 10/14/16, the Petitioner filed a Petition for Writ of Certiorari with the South Carolina Supreme Court.

Argument

Rule 242 (b)(1), of the South Carolina Appellate Court Rules, provides that a Petition for Writ of Certiorari will be granted "Where there are novel questions of law." The present case provides a question that meets that criterion.

This appeal has been brought to resolve a time-calculation related question; one that concerns credit eligibility for a sentence of twenty-five years (25) for Accessory Before the Fact to a Felony. The Petitioner advanced the question thru the South Carolina Department of Correction's Grievance process, the South Carolina Administrative Law Court, and the South Carolina Court of Appeals based on the previous decision in Al Shabazz.

At each step in the process the Department of Corrections' reasoning, for the denial of credits, has evolved. Initially, through SCDC Classification workers, they insisted that the Petitioner's sentencing orders stated "a mandatory minimum term of twenty-five years". Then, in response to the Initial and Step 2 Grievances, they insisted that their calculations were "per statute". Later, in the Administrative Law Court, they referred to the twenty-five year sentence as "a reduction" in sentence, and stated that Judge Floyd had lowered the Accessory sentence to match the Trafficking sentence imposed at the same time. In the South Carolina Court of Appeals, they admitted that the Punishment for Murder statute, South Carolina Code Ann. Section 16-3-20, doesn't adequately cover the Petitioner's sentence. They admitted that Judge Floyd imposed a sentence of his own design, referring the twenty-five (25) year sentence as a "more lenient sentence", but tried to – erroneously - argue that the Petitioner's sentence was barred by statute from being considered under the rules governing "no parole" offenses.

Both sides, the Petitioner and SCDC, have argued that S.C. Code Ann. Section 16-3-20 is perfect example of "a clear and unambiguous" statute. It is, by its very nature, a penal statute; as it concerns the "Punishment for Murder".

Throughout the Grievance, and Appellate, processes the petitioner has held that his sentence does not meet the requirements listed in the statute. It is neither a death sentence, life without the possibility of parole, nor "a mandatory minimum term of imprisonment for thirty years". Therefore it should not be held to the restrictions attached in, and predicated on, a "mandatory minimum term of imprisonment for thirty years".

The twenty-five sentence has been referred to, by SCDC, as "a boon", a "reduction in sentence", and an exercise in "discretion" by Judge Floyd. All of which support the Petitioner's assertion that the twenty-five year sentence, for Accessory, was a conscientious decision by Judge Floyd. Not a mistake, but a decision to impose a credit eligible sentence. "Only sentence known to law is judgment rendered on the records of court." Greene v. U.S., 358 U.S. 326. "The intent of the sentencing court must guide any retrospective inquiry into the term and nature of a sentence. U.S. v. Taylor, 414 F.3d 528.

The S.C. Legislature amended the Punishment for Murder statute, S.C. Code Ann. 16-3-20, in June of 1995. That particular version was in effect at the time the Petitioner's crime occurred, and when he was sentenced. The Legislature has since modified Section 16-3-20 again; giving them an additional opportunity to clarify their "intent". Neither version covers the Petitioner's sentence.

There are multiple cases that limit the need for interpreting a statute, and use the rules of statutory construction, when a statute's language is "clear and unambiguous". "Where a statute's language is plain and unambiguous, and conveys a clear and definite

meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. State v. Hodges, 341 S.C. at 85; 533 S.E.2d at 581. Miller v. Aiken, 364 S.C. 303; 613 S.E.2d 364 (2005). Tilley v. Pacesetter Corp., 355 S.C. 361; 585 S.E.2d 292 (2003). Bass v. Isochem, 365 S.C. 454; 617 S.E.2d 369.

There are also multiple cases discussing penal statutes, and the language contained therein. "Courts must nevertheless interpret a penal statute that is clear and unambiguous according to its literal meaning." State v. Mills, 360 S.C. 621, 624; 602 S.E.2d 750, 752 (2004). "Penal statutes must be construed strictly against the state and in favor of the defendant." State v. Blackmon, 304 S.C. 270, 273; 403 S.E.2d 660, 662 (1991).

The South Carolina Court of Appeals agreed that the Petitioner's argument is supported by the plain language in the Punishment for Murder statute. Their Order stated "ineligibility for parole and sentence-reduction credits requires a person to be sentenced to a mandatory minimum term of imprisonment for thirty years". Under the plain meaning rule, it is not the Court's place to change the meaning of a clear and unambiguous statute Hodges v. Rainey, 341 S.C. 79; 533 S.E.2d 578 (2000).

The S.C. Court of Appeals then held that South Carolina Legislators had "intended" to bar all persons sentenced under S.C. Code Ann. Section 16-3-20 from credit eligibility; irregardless of the actual sentences imposed.

The Petitioner will contend that is in error. "Courts are bound to give effect to the expressed intent of the legislature; thus, a court must follow the plain and unambiguous language in a statute and has no right to impose another meaning." Smith v. State, 412 S.C. 472; 772 S.E.2d 286. "If the literal text of a statute produces a result that is, arguably,

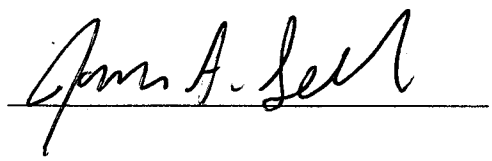
somewhat anomalous, Court of Appeals is not simply free to ignore unambiguous language because the court can imagine a preferable version." Crespo v. Holder, 631 F.3d 130. "Where the language is clear and explicit, the court cannot rewrite the statute and inject matters into it which are not in the legislature's language. What a legislature says in the text of a statute is considered the best evidence of legislative intent or will." Bayle v. South Dep't of Transportation, 344 S.C. 115, 542 S.E.2d 736. The Punishment for Murder statute is very clear on the three available sentencing options, and the restrictions attached to each. Simply put, the Petitioner's sentence is not covered by any of those restrictions because it is not a "mandatory minimum term of imprisonment for thirty years". The statute supports him in this.

It is the sentence, of twenty-five years, that brings this argument to the surface. The Petitioner was sentenced for the crime of Accessory Before the Fact to a Felony; not Murder. Judge Floyd understood this, and imposed the sentence he saw fit. He created a parallel between the sentence he imposed on the Petitioner, and the sentence he imposed on William T. Perry. The Solicitor's Office had the opportunity to object, but failed to do so. The sentence became the law of the case.

Conclusion

For the above stated reasons, the Petitioner submits that this Petition should be granted. If the Court sees fit to grant this Petition for Writ of Certiorari, the Petitioner would request permission under the rules to fully brief the argument contained herein.

Respectfully submitted,



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South Carolina Department of Corrections — RESPONDENT,

CERTFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Petition for Writ of Certiorari has been served on opposing counsel, Christina Catoe Bigelow, Esquire, SCDC Office of General Counsel, 4444 Broad River Rd., Columbia, South Carolina, 29201 by depositing a copy of the same, postage prepaid, in the US Mail here at Wateree River Correctional Institution.

James A. Sellers, #24338
Pro se Petitioner

SWORN to before me
this 14th day of October, 2016.
Pamela Dittsfield (L.S.)
Notary Public for South Carolina
My Commission Expires: 3/15/2021

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